

ASSEMBLY BILL

No. 392

Introduced by Assembly Member Alejo

February 14, 2011

An act to amend Sections 54954.2 and 54957.5 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

AB 392, as introduced, Alejo. Ralph M. Brown Act: posting agendas.

(1) Existing law, the Ralph M. Brown Act, requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Existing law requires that the legislative body of a local agency post an agenda, as specified, at least 72 hours before a regular meeting of that body, and prohibits the legislative body from acting on or discussing any item not appearing on the agenda, except as provided.

Existing law requires that agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of the legislative body of a local agency in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act. Existing law establishes a procedure for the disclosure of any writings that are distributed less than 72 hours prior to the meeting.

This bill would additionally require the legislative body of the local agency, at least 72 hours before a regular meeting of that body, to post the writings that relate to an agenda item for the open session of that regular meeting. This bill would require the legislative body to post the agenda and the writings on its Internet Web site, if any, as specified. The bill would repeal the procedure for the disclosure of any writings

that are distributed less than 72 hours prior to the meeting and would instead prohibit the legislative body from acting on or discussing an item on the agenda for which a related writing was not properly disclosed at least 72 hours prior to the meeting, except as provided. By expanding the duties of local agencies, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54954.2 of the Government Code is
2 amended to read:
3 54954.2. (a) (1) At least 72 hours before a regular meeting,
4 the legislative body of the local agency, or its designee, shall post
5 an agenda containing a brief general description of each item of
6 business to be transacted or discussed at the meeting, including
7 items to be discussed in closed session, *and shall post any writing,*
8 *as described in subdivision (a) of Section 54957.5, that relates to*
9 *an agenda item for the open session of that regular meeting of the*
10 *legislative body of the local agency.* A brief general description
11 of an item generally need not exceed 20 words. The agenda shall
12 specify the time and location of the regular meeting and shall be
13 posted, *along with the writings in a manner that makes it clear to*
14 *which agenda items the writings relate, on the local agency's*
15 *Internet Web site, if any, and in a location that is freely accessible*
16 *to members of the public. Each local agency shall list the address*
17 *of the publicly accessible location on the agendas for all meetings*
18 *of the legislative body of that agency.* If requested, the agenda or
19 writing shall be made available in appropriate alternative formats
20 to persons with a disability, as required by Section 202 of the
21 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132),
22 and the federal rules and regulations adopted in implementation

1 thereof. The agenda shall include information regarding how, to
2 whom, and when a request for disability related modification or
3 accommodation, including auxiliary aids or services may be made
4 by a person with a disability who requires a modification or
5 accommodation in order to participate in the public meeting.

6 (2) No action or discussion shall be undertaken on any item not
7 appearing on the posted agenda *or any item for which a related*
8 *writing was not disclosed pursuant to subdivision (a)*, except that
9 members of a legislative body or its staff may briefly respond to
10 statements made or questions posed by persons exercising their
11 public testimony rights under Section 54954.3. In addition, on
12 their own initiative or in response to questions posed by the public,
13 a member of a legislative body or its staff may ask a question for
14 clarification, make a brief announcement, or make a brief report
15 on his or her own activities. Furthermore, a member of a legislative
16 body, or the body itself, subject to rules or procedures of the
17 legislative body, may provide a reference to staff or other resources
18 for factual information, request staff to report back to the body at
19 a subsequent meeting concerning any matter, or take action to
20 direct staff to place a matter of business on a future agenda.

21 (b) Notwithstanding subdivision (a), the legislative body may
22 take action on items of business not appearing on the posted agenda
23 *or items for which a related writing was not disclosed pursuant*
24 *to subdivision (a)*, under any of the conditions stated below. Prior
25 to discussing any item pursuant to this subdivision, the legislative
26 body shall publicly identify the item.

27 (1) Upon a determination by a majority vote of the legislative
28 body that an emergency situation exists, as defined in Section
29 54956.5.

30 (2) Upon a determination by a two-thirds vote of the members
31 of the legislative body present at the meeting, or, if less than
32 two-thirds of the members are present, a unanimous vote of those
33 members present, that there is a need to take immediate action and
34 that the need for action came to the attention of the local agency
35 subsequent to the agenda being posted as specified in subdivision
36 (a).

37 (3) The item was posted pursuant to subdivision (a) for a prior
38 meeting of the legislative body occurring not more than five
39 calendar days prior to the date action is taken on the item, and at

1 the prior meeting the item was continued to the meeting at which
2 action is being taken.

3 (c) This section is necessary to implement and reasonably within
4 the scope of paragraph (1) of subdivision (b) of Section 3 of Article
5 I of the California Constitution.

6 SEC. 2. Section 54957.5 of the Government Code is amended
7 to read:

8 54957.5. (a) Notwithstanding Section 6255 or any other
9 provisions of law, agendas of public meetings and any other
10 writings, when distributed to all, or a majority of all, of the
11 members of a legislative body of a local agency ~~by any person~~ in
12 connection with a matter subject to discussion or consideration at
13 an open meeting of the body, are disclosable public records under
14 the California Public Records Act (Chapter 3.5 (commencing with
15 Section 6250) of Division 7 of Title 1), and shall be made available
16 upon request without delay. However, this section shall not include
17 any writing exempt from public disclosure under Section 6253.5,
18 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

19 ~~(b) (1) If a writing that is a public record under subdivision (a);~~
20 ~~and that relates to an agenda item for an open session of a regular~~
21 ~~meeting of the legislative body of a local agency, is distributed~~
22 ~~less than 72 hours prior to that meeting, the writing shall be made~~
23 ~~available for public inspection pursuant to paragraph (2) at the~~
24 ~~time the writing is distributed to all, or a majority of all, of the~~
25 ~~members of the body.~~

26 ~~(2) A local agency shall make any writing described in~~
27 ~~paragraph (1) available for public inspection at a public office or~~
28 ~~location that the agency shall designate for this purpose. Each local~~
29 ~~agency shall list the address of this office or location on the agendas~~
30 ~~for all meetings of the legislative body of that agency. The local~~
31 ~~agency also may post the writing on the local agency's Internet~~
32 ~~Web site in a position and manner that makes it clear that the~~
33 ~~writing relates to an agenda item for an upcoming meeting.~~

34 ~~(3) This subdivision shall become operative on July 1, 2008.~~

35 ~~(e) Writings that are public records under subdivision (a) and~~
36 ~~that are distributed during a public meeting shall be made available~~
37 ~~for public inspection at the meeting if prepared by the local agency~~
38 ~~or a member of its legislative body, or after the meeting if prepared~~
39 ~~by some other person. These writings shall be made available in~~
40 ~~appropriate alternative formats upon request by a person with a~~

1 ~~disability, as required by Section 202 of the Americans with~~
2 ~~Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal~~
3 ~~rules and regulations adopted in implementation thereof.~~

4 ~~(d)~~

5 (b) Nothing in this chapter shall be construed to prevent the
6 legislative body of a local agency from charging a fee or deposit
7 for a copy of a public record pursuant to Section 6253, except that
8 no surcharge shall be imposed on persons with disabilities in
9 violation of Section 202 of the Americans with Disabilities Act of
10 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations
11 adopted in implementation thereof.

12 ~~(e)~~

13 (c) This section shall not be construed to limit or delay the
14 public's right to inspect or obtain a copy of any record required to
15 be disclosed under the requirements of the California Public
16 Records Act (Chapter 3.5 (commencing with Section 6250) of
17 Division 7 of Title 1). Nothing in this chapter shall be construed
18 to require a legislative body of a local agency to place any paid
19 advertisement or any other paid notice in any publication.

20 SEC. 3. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.